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MUNICIPAL GOVERNMENT BOARD

PROCEDURAL REVIEW

CONSULTATION DOCUMENT

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Municipal Government Board

Consultation on the Board's Hearing System

The Municipal Government Board is interested in hearing from those who appear before the Board about the Board's scheduling and hearing process. From the Board's perspective, the current system results in too great a loss of scheduled hearing time. The Board believes that, through consultation with those who appear before the Board, it can develop revised procedures that will improve the scheduling and hearing of appeals, reduce cost and delay for the parties, and enhance the Board's service to the public at large.

This discussion paper is your invitation to share insights on the issues set out below. The Board invites your written comments. In December, 1996 the Board held a preliminary workshop to explore solutions to these issues. A commentary on that workshop is attached as ***Appendix 1***. The Board will be conducting a further workshop with interested stakeholders and would welcome your participation in that forum. The Board's objective is to come up with workable reforms to improve the performance of the appeal and hearing system under the Municipal Government Act.

This discussion paper is divided into the following parts:

1. The problems to be addressed.
2. Statistical results from the Board's preliminary research.
3. The Board's statutory authority.
4. The Board's procedural guidelines.
5. Possible areas for reform.
6. Options using new technology.
7. Are their solutions at the municipal level?
8. Procedures for further consultation.

1. Problems to be addressed

In 1995, the Board processed 21,930 individual appeals. In 1996, at the time of this review, the Board had already processed 16,331 individual appeals. This is a very large volume of cases. In each case, the Board has to ensure that all parties are treated fairly and that natural justice is respected throughout. This volume of cases calls for efficiency but this cannot be at the expense of a fair result based on due process. The proposals for reform set out in this discussion paper must respect this key objective of procedural fairness, efficiency alone is not sufficient justification.

Not all the Board's cases are alike. The Board deals regularly with several different types of property. This includes appeals related to Residential, Multi-family residential, Office, Commercial, Industrial, Business and Farm properties. A summary of these various types of appeal, with comments on the hearing usually involved, is attached as ***Appendix 2.*** The different hearing lengths, levels of complexity, types of representation and issues involved mean that different solutions may be necessary for different types of appeal.

The Board launched this consultation process after identifying several problem areas:

1. Many appeals are withdrawn either just before or at the scheduled hearing. The Board (and therefore the public) incurs the expense of an unused hearing panel. Withdrawn appeals can also result in substantial costs to appellants and to respondent municipalities which must prepare their cases, ensure that witnesses are available and arrange for representation. Every dollar of direct cost also involves several dollars of indirect costs.

2. Reasons for appeal are sometimes unclear. This precludes effective pre-hearing case management. Parties sometimes seem unsure what case they must meet on the appeal. They either prepare for the wrong issue or seek an adjournment to deal with unexpected issues disclosed once the hearing begins.

3. Many times there has been inadequate pre-hearing exchange of information and documents. Some parties often only exchange their information at the last minute. At other times new evidence is introduced during the hearing causing surprise. These practices often result in adjournment requests.

4. The Board often receives requests to adjourn cases pending other cases or pending the results of Court proceedings that may impact on the case at hand. This results in a backlog of cases and, for the individual case, sometimes pushes the decision beyond the 150 day limit.

The Board has tried in the past to address these problems by consulting with municipalities, tax agents and individuals. The Board has also increased its efforts to consult with parties about suitable hearing dates. Despite these initiatives, the problems persist, with these consequences:

- Undue cost and inconvenience to parties
- Undue expense for the Board, and therefore the public
- Frustration for Board members, all of whom are part-time and commit time from their vocations for the Board's hearings
- A reduced ability to deal with backlogged cases due to lost hearing time

Again, the Board is conscious that there is no one solution for all types of appeal. For relatively simple appeals, dealing with residential or farm properties for example, adding complexity to the process would be inappropriate and probably counterproductive. Simple appeals need a simple process. However, for the more complex commercial or industrial appeal, adjusting the process may well lead to improvements in fairness and efficiency. The Board invites those who comment on this paper to address not only the procedural suggestions raised, but also the type of appeal to which they might apply.

All participants before the Board, as well as the Board itself, have limited resources that they must use wisely. The Board has put forward ideas designed to save unnecessary expense for stakeholders. At the same time the Board has suggested ways that the parties, through self-help, can resolve problems without having to draw on the Board's limited resources.

2. Preliminary Research

In an effort to find solutions in this area, the Board commissioned preliminary research to assess the dimensions of the problem, solutions used elsewhere, and options for improved practices. This discussion paper will give a synopsis of that preliminary research to get reaction to certain suggestions and to encourage creative thinking about what may work in the Alberta context.

Lost Hearing Time Analysis

The Board was anxious to take an objective look at what is actually happening in terms of inefficiencies in the scheduling and hearing system. To achieve this, it selected four sample months and commissioned its consultants to analyze the Board's experience during these sample months. It selected June 1995, September 1995, November 1995 and March 1996. As far as possible, the choice of months was to analyze typical Board experience, avoiding abnormal periods.

The Board's practice has been to assign cases to a hearing slot on a given day on which a three person panel is scheduled to sit. On any given day, the panel will usually be scheduled to hear several cases. Some "cases" in fact involve several properties, each listed separately on the municipal tax role. As the board consolidates hearings in such cases, they have been treated as one appeal, not several, in this analysis.

Full Days Lost

In the four sample periods, the Board scheduled 270 days of hearing. Due to cancellations of some form or another, 42 of those hearing days went entirely unused. That is, ***on 16% of the scheduled hearing days, no cases were heard at all.*** **Table 1** shows the breakdown of these figures by period and location. It shows that the problem arises mostly in Edmonton and Calgary and is particularly acute in Calgary where, on average, 23% of the days set for hearing were entirely lost due to cancellations.

Hearing Slots Lost

The Board's concern is not just with full hearing days lost. Much inefficiency occurs when, on a given hearing day, certain cases proceed while others are withdrawn or canceled at the last minute. Overall, the survey results show that 40% of the Board's hearing slots are lost due to cancellations of some form. These figures are broken down in **Table 2**.

Table 2

Hearing Slots Lost - all matters

Sample	Totals	Used	Lost	% Lost
June 95	261	125	136	52%
Sept 95	318	209	109	34%
Nov 95	315	187	128	41%
March 96	229	157	72	31%
All Periods	1123	678	445	40%

Table 1

Full Hearing Days Lost, by Location and Test Period

Sample	Location	Total	Lost	Used	%lost
June 95	Calgary	39	16	23	41%
June 95	Edmonton	32	4	28	13%
June 95	High River	1		1	
June 95	Red Deer	2		2	
June 95	Valleyview	1	1		100%
June 95	Whitecourt	1	1		100%
June 95 Total		76	22	54	29%
Sept. 95	Calgary	37	5	32	14%
Sept. 95	Edmonton	28	1	27	4%
Sept. 95	Red Deer	1		1	
Sept. 95 Total		66	6	60	9%
Nov. 95	Andrew	1		1	
Nov. 95	Athabasca	1		1	
Nov. 95	Calgary	39	7	32	18%
Nov. 95	Claresholm	1		1	
Nov. 95	Didsbury	2		2	
Nov. 95	Drumheller	1		1	
Nov. 95	Edmonton	6	1	5	17%
Nov. 95	G'Prairie	1		1	
Nov. 95	Lac La Biche	1		1	
Nov. 95	Red Deer	3		3	
Nov. 95	St. Paul	2		2	
Nov. 95 Total		**58**	**8**	**50**	**14%**
March 96	Calgary	25	4	21	16%
March 96	Edmonton	36	2	34	6%
March 96	G'Prairie	5		5	
March 96	Westlock	4		4	
March 96 Total		**70**	**6**	**64**	**9%**
Overall Total		270	42	228	16%

Table 3 shows the efficiency of the hearing days that went ahead, that is, excluding the full days lost. It shows that, on the average hearing day on which some hearings proceed, ***33% of the available hearing slots are lost*** due to cancellations of some form.

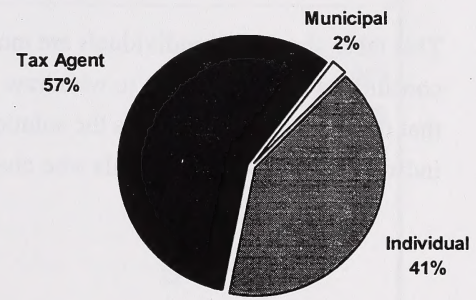
Table 3
Time Lost Excluding Full Days Lost
(efficiency of hearing days when some cases heard)

	June 95	Sept. 95	Nov. 95	March 96	All periods
Slots Used	124	208	186	156	674
Slots Lost	87	80	104	62	333
Total Slots	211	288	290	218	1007
% Lost	41%	28%	36%	28%	33%

Representation on Appeals

The Board's preliminary observation was that the reasons why matters fail to proceed are different, depending upon whether the appeal is brought by an unrepresented individual or by an individual appealing through a tax consultant. In the sample periods, the breakdown of appeals scheduled to be heard shows that 41% of appeals were brought by individuals, 2% by municipalities and 57% by persons represented by tax agents.

Table 4 - Representation on Appeals



The statistics support the Board's initial observation that there are differences between represented and unrepresented appellants in why cases do not go ahead. **Table 5** illustrates those differences.

Table 5
Who Cancels Hearing Time and Why

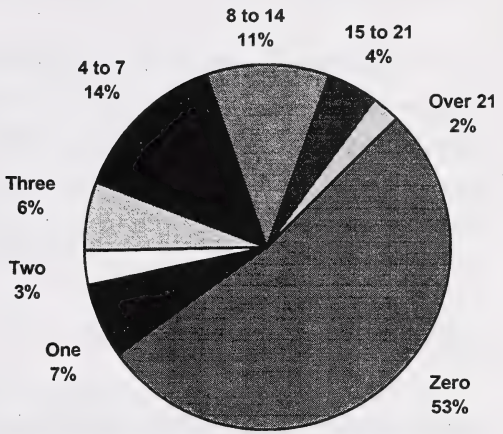
Why	Total	Individual	Municipal	Tax Consultant
Canceled	1	1		
Dismissed	2	2		
No Argument	1	1		
No Show	33	32		1
Postponed	158	53	2	103
Rescheduled	1			1
Withdrawn	249	40	10	199
Totals	445	129	12	304

This table shows that individuals are more likely not to show up for a hearing, while tax consultants are more likely to withdraw a case or to seek a postponement. This suggests that the problem, and perhaps the solutions, may be different for unrepresented individuals than for individuals who choose a representative.

Notice of Cancellation of Hearings

The Board recognizes that in some cases hearings need to be adjourned and in other cases parties will settle their appeals. However, with sufficient notice the hearing time allocated to such cases could be reassigned to other cases. The survey shows that, at present, the notice given that hearing time will be lost is minimal and in almost all cases too short to reschedule another matter for hearing.

Table 6 - Days Notice of Cancellation



History of Adjournments

Table 7 History of Adjournments		
Cases that did not proceed for some reason		445
Number with no other adjournment record		379
Number with other adjournments		66
Adjourned before (once)	23	
Adjourned before (3x)	2	
Adjourned after (once)	32	
Adjourned after (twice)	7	
Adjourned before and after	2	

The survey showed that, during the survey period, 445 cases did not go ahead on the scheduled date. The survey examined the number of times these same cases had been

adjourned, either before or after. The incidence of repeated adjournments associated with these appeals was low. This suggests that the problem of lost hearing time usually does not involve the same cases being adjourned repeatedly.

However, this masks a deeper problem. In the case of many postponements, the appeal is adjourned before the hearing because one of the parties is waiting for the results of a court challenge or an appeal involving a different property. While adjournments for this reason often do not result in lost hearing time, they do result in a large and cumbersome backlog of appeals. In 1996, the Board had 2694 appeals pending for reasons of this sort.

The Cost of Lost Hearing Time

The Municipal Government Board prides itself in proceeding efficiently to deal with a large volume of cases. However, the costs of operating the Board are significant. Board estimates show that even the simplest residential appeal costs the public about $230.00. This cost is incurred whether the case goes ahead or is adjourned. If the slot left vacant cannot be filed, then these expenditures are wasted. The 445 lost slots in the four sample months would thus waste from $100,000 to $400,000 each year.

The costs incurred by the Board (and thus the taxpayer) for unused hearing time are only part of the picture. There are additional costs to the parties who have to prepare for hearings that may not proceed. There is also the cost and inconvenience caused to parties who would like to get their appeals heard at an earlier date, but are unable to do so because the Board's calendar is backlogged.

> ***The Board is interested in hearing from parties about how cases that do not proceed as scheduled affect their interests. Does this involve significant cost or disruption and if so, how much or how?***

3. The Board's Statutory Authority

Any solution to the problems identified above must comply with the terms of the Municipal Government Act, which governs all the Board's proceedings. The Act

contains sections that allow the Board to act (enabling provisions) and other sections that limit the Board's options (limiting provisions). The important provisions to consider are set out below.

Enabling Provisions

1. The rule making power:

   523 The Board may make rules regulating its procedures.

2. The power to award costs:

   501 The Board may determine the costs of and incidental to any hearing before it and decide by whom and to whom the costs are to be paid.

3. The government's ability to prescribe fees:

   522 The Minister may set fees payable by parties, intervenors or others who appear at hearings before the Board or at inquiries conducted by the Board and for obtaining copies of the Board's decisions and other documents.

4. The requirement for written grounds for an appeal:

   491(1) Any matter that is to be dealt with by a hearing before the Board must be in the form of a written statement ...

   (2) The statement referred to in subsection (1) must include

   (a) the reason for the matter being referred to the Board,

   (b) a brief explanation of the issues to be decided by the Board, and ...

5. The power to proceed in a party's absence:

   495 If any person who is given notice of the hearing does not attend, the Board may proceed to deal with the matter if it is satisfied that all persons required to be notified were given notice of it.

6. The power to control contempt:

> 521 A person who commits or does any act, matter or thing that would, if done in or in respect of the Court of Queen's Bench, constitutes a contempt of the Court is in contempt of the Board, and on an application by the Board, the Court of Queen's Bench may commit that person for contempt of the Board, and the Court has the same power of committal in respect of contempt of the Board as it has in respect of contempt of the Court.

Limiting Provisions

Some provisions limit the options that might otherwise be available.

7. Section 487 provides that the Board will sit in panels of at least three members.

> 487(1) The administrator must select any 3 or more members of the Board to sit as a panel of the Board.
>
> (2) The administrator may establish as many panels as the administrator considers necessary.
>
> (3) The members of a panel must choose a presiding officer from among themselves.

The board believes this section is broad enough to allow one panel to hear preliminary matters on an appeal, and to have a different panel hear the merits of the appeal.

8. Section 489 relieves against the 3 person panel requirement by setting a panel's quorum as a majority of the panel's members, which is therefore a minimum of 2. This prevents delay due to unavoidable absence which has not, so far, been a problem.

> 489 A majority of the members of a panel of the Board constitutes a quorum.

9. Section 488(2) provides that the Board must hold hearings.

> The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a), (b) and (c).

10. Section 493(1) requires the administrator to set a date, time and location for a hearing before the Board for every appeal.

> 493(1) On receiving a written statement referred to in section 491(1), the administrator must set a date, time and location for a hearing before the Board.
>
> (2) If the written statement relates to a complaint about an assessment for linear property, the administrator must advise the Minister that the statement has been received.

11. The administrator must send a copy of the statement of appeal to the municipality within 30 days, and at least 14 days before the hearing, notifying all parties of the date, time and location.

> 494 If a matter is to be heard by the Board, the administrator must
>
> (a) within 30 days after receiving a written statement under section 491(1), provide the municipality with a copy of the statement, and
>
> (b) at least 14 days before the hearing, notify the municipality, the person who sent the written statement to the administrator and any assessed person who is affected by the matter to be heard of the date, time and location of the hearing.

Section 500 imposes a time limit on the Board's decisions of 150 days from when the Board received the written appeal statement. This section poses a particularly difficult problem when cases are postponed because their outcome may depend on a case pending before the courts.

> 500(3) If the hearing relates to the decision of an assessment review board, the board must make its decision within 150 days after receiving the written statement under section 491(1).

4. The Board's Procedural Guidelines

In December, 1995 the Board adopted what it calls "Procedural Guidelines" which are attached as ***Appendix 3***. These are rules adopted under the authority of s. 523 of the Act. These Procedural Guidelines include provisions relevant to this review.

Notice of Appeal:

5. An appeal to an Assessment Review Board decision or an assessment appeal of linear property shall be filed in the form prescribed in appendix A which is attached. All other appeals or applications shall be in accordance with the statutes authorizing the appeal or application.

The procedural guidelines set out appeal forms.

Pre-hearing meetings:

8. Pre-hearing Meetings

The Board may direct that the parties hold meetings before the actual hearing date. The purpose of these meetings is:

(a) To clarify and set procedures to be followed at the hearing.
(b) To deal with other matters that are not substantive in nature.
(c) To deal with points preliminary to a hearing such as the question of status of parties, the jurisdiction of the Board, and the disclosure of documents.

While this power is occasionally used, it is not a part of the Board's regular practice.

Postponements:

9. Postponements

Requests for postponements, with reasons, of a scheduled hearing can be granted only by a panel of the Board. Written requests for postponements received 10 days before the scheduled hearing may be considered by a panel of the Board before the scheduled hearing.

Negotiated Resolutions:

10. Consent Matters

Subject to the Board having jurisdiction and authority to do so, the parties involved may resolve matters by consent. The Board may accept and endorse the mutual consent. Parties shall advise the Board as soon as possible that they want to resolve certain matters by consent.

Complex Issues:

Part 2 of the Procedural Guidelines apply to complex issues, but only upon the Board's direction. They provide for a hearing brief providing particulars of the issues in dispute.

5. Areas where solutions might be found

The Notice of Appeal

The Notice of Appeal document serves two main purposes. First, it is the formal document launching the appeal. Second, it is the primary means by which the appellant gives the respondent notice of the grounds upon which the appeal is based. Section 491 of the Act requires that a statement of appeal **must** include the reason for the matter being referred to the Board and a brief explanation of the issues to be decided by the Board.

A common concern expressed by persons seeking postponements is that they have been surprised by the issues now raised and need additional time to prepare, seek additional evidence and so on. This suggests that the present notice of appeal (or the way appellants complete that form) is inadequate to inform respondents of the issues likely to be raised.

The form of this notice was discussed at the Board's first workshop. See: ***Appendix 1***. There may be a need for a simple form for simple appeals, with a more comprehensive form, or perhaps an additional section to complete, for more complex appeals. The Board's initial suggestion is that the simple form should relate to "Owner occupied residential and farm property appeals where the owner is the appellant appearing on his or her own behalf."

Are Notices of Appeal as currently prepared sufficiently clear to:

- ***give the information required by the Act?***
- ***give respondents a clear indication of the issues that will be raised at the hearing?***

Would a short form for owner occupied residential or farm property appeals be appropriate, with a longer form for all other appeals?

- ***Is this the appropriate division between simple and complex matters in most cases?***

The Board's procedural guidelines require that notices of appeal (statements, to use the term in the Act) must be in the prescribed form. The form itself has a 1/3 page section (7 lines) headed "Brief Description of the Reasons for Referring the Decision and the Issues to be Decided by the Municipal Government Board." The form suggests that applicants "attach an extra page if necessary". Beyond that, it offers no advice and gives no direction about the need for clarity and sufficiency in the written reasons for appeal.

Could improvements be made in the form of the Notice of Appeal to clarify what is required of applicants in the document?

Many Boards publish procedural guides, information bulletins or similar laypersons' guides to help people know what information to include in their appeal documents. For example, Ontario's Municipal Board has a series of Practice Directions describing its procedural requirements. Others print such information directly on the appeal form, sometimes using a check list or example.

Would it help if the Board published such an information document?

Should the Board add guidelines, examples or a checklist to its present appeal form?

The Board is not committed to the current form design and is willing to explore any changes that would help ensure the form achieves its purpose which is to inform respondents and the Board in the issues involved in the appeal. A preliminary draft for a new form is attached as ***Appendix 4***. No matter how good the form, however, it will not solve the problems at hand if appellants do not have the information needed when they complete the form and if, despite requiring particulars, the Board lacks any means to enforce that requirement.

Post Notice Particulars

Appellants only have 30 days to appeal a decision. Some suggest that this time period is too short to expect appellants to give precise grounds for their appeal. The Board could adopt a rule allowing parties to file appeals initially with only brief grounds, but requiring that full and complete grounds be given, for example within a further 30 days of the date of filing. Ontario required a "Statement of Issues" within 60 days of when the OMB receives an appeal. If it is not received the Respondent can apply to strike the appeal.

> ***Would a requirement for parties to file a fuller explanation of their grounds within 30 days of filing their appeal help clarify the issues on appeal?***
>
> ***Is 30 days from the first date of filing an appropriate time period?***

Even with a requirement to file fuller particulars of the appellant's grounds for appeal, some appellants may fail to comply. How should this be handled? Several options are possible.

- The Board might proceed with the hearing based on whatever is filed.
- The Board might proceed with the hearing based on whatever is filed, but award costs against parties who failed to file particulars adequate to meet the rules.
- The Board might adopt a "two track" hearing schedule, placing cases where particulars have been properly given before a panel ready to hear the merits, and cases that lack adequate particulars before an "administrative panel" that would give directions to ensure the particulars are complete and then only get a hearing date once that was done. This way full hearing slots would only go those cases that complied with the rule.
- The Board could pass a rule saying that any case that lacked sufficient particulars should be dismissed.
- The Board could pass a rule allowing the Respondent to apply to have the appeal dismissed.

The Board's preliminary preference is to adopt rules that leave it to the party complaining that the rules have not been followed to apply to the Board to strike the appeal or impose whatever other remedy is appropriate for non-compliance.

If these suggestions were adopted, how would it improve or hurt the appeal process?

Are there other suggestions about how the Board might ensure that appellants give timely particulars of the grounds they are raising in their appeal?

Pre-hearing Case Management

Many tribunals use investigating officers or other staff members to review cases before the hearing to make sure the case and the parties are ready to proceed. The Board has adopted procedural guidelines that allow it to do this in complex cases. (See Part 2 of ***Appendix 3***). The Board handles a very large volume of cases, many of which need no case management. The Board's preliminary view is that it would be too expensive, for the Board and the parties, to introduce mandatory case management involving Board staff for all appeals.

Do parties believe the Board ought to be instituting any form of mandatory case management for appeals (other than for complex cases)?

How should the Board distinguish those cases that need case management attention from those that do not?

Are the Board's current procedural guidelines (Part 2) sufficient for complex cases? Do parties have any suggestions to improve the Part 2 rules?

Pre-hearing Exchange of Information

Parties themselves could do more to make sure their cases are ready for hearing. This could be encouraged by passing a rule that required parties to discuss the issues and evidence to be advanced on the appeal and to advise the Board once they had done so. Ontario, for example, achieves this by requiring a "Certificate of Readiness". Such a rule

could oblige appellants and respondents to each certify to the Board that they are clear on the issues being advanced, have exchanged relevant documents and are otherwise prepared to proceed with the case.

The Board might reinforce this process with a "two-track" schedule, allocating full hearings slot only to cases where the parties had complied with the rule. Non-compliant cases would only receive an administrative hearing. That panel would give an order to complete the pre-hearing preparation (and possibly award costs) but not hear the merits of the case. Thus, full hearing slots would be reserved for those cases were the parties had made reasonable efforts at pre-hearing case preparation. Any such rule should require compliance sufficiently far in advance of the scheduled hearing so that slots previously allocated to non-compliant cases could be reallocated to those ready to proceed.

Do parties believe an obligation on parties to clarify issues and exchange documents prior to hearing would be useful and workable?

If so, how far in advance of the proposed hearing, or how long after the filing of the appeal, should this occur?

Should there be a costs award where a panel finds a party has failed to do what was required of them under any such rule and if so, what should those costs be?

Are there other useful steps parties might be directed to take prior to hearing in order to reduce unnecessary cancellations or delay?

Maintaining a Standby List

Some tribunals and the Courts fill emerging gaps in their hearing schedules by maintaining a standby list. The list consists of cases that are ready to proceed where the parties have indicated a willingness to proceed on relatively short notice, for example one or two weeks.

Obviously, any case that can be heard using what would otherwise be a wasted hearing slot reduces the Board's backlog of cases and frees up future slots for other cases. This

could add flexibility to the Board's schedule and reduce the time needed to deal with cases where parties are ready and willing to proceed.

The Board's preliminary view is that some individual appellants may be willing to proceed on a standby list bases. It is interested in hearing from municipalities and tax consultants about whether they could and would be willing to accommodate a standby list system to deal with appropriate cases. Due to section 493(1) of the Act the Board would schedule such cases for a regular hearing slot, but bring them forward if and when an earlier slot became vacant.

Do parties believe a standby list system would work for some of their cases?

What difficulties would a standby list system create for parties and how might those problems be alleviated?

Would parties be willing to waive the 14 day notice required by s. 494(b) to have a case brought forward to be heard at an earlier available hearing slot?

What proportion of cases do parties believe might benefit from a standby list system?

Costs

Many courts and tribunals use costs as a deterrent. Costs can serve a two-fold purpose:

- They provide partial or full compensation for the party that has to prepare for a case that ends up being adjourned or withdrawn.
- They provide an incentive for early settlement if possible and discourage last minute withdrawals or adjournment requests.

A difficulty sometimes experienced using costs as a deterrent is that hearing time is consumed with arguments about who was to blame for the withdrawal or adjournment and how much the costs ought to be. Some Boards resolve the question of the amount of costs by setting up a fixed scale in their rules.

Do parties believe a more vigorous use of the Board's s. 501 power to award costs in cases of avoidable adjournments or withdrawals would be appropriate?

How should the Board calculate an award of costs? If it is to be based on the actual costs to the party inconvenienced, what sort of figures are involved?

Should any costs for avoidable adjournments or withdrawals be based on a fixed schedule and if so, in what amounts?

Should any such schedule involve a sliding scale involving the property values in question, the number of properties involved, the hearing time lost or similar factors? If so, what factors should the Board include?

A Refundable Deposit System

An alternative to assessing costs is to implement a refundable deposit system. Section 522 allows the Minister to set fees. Board's in most comparable Provinces have some form of fee structure for assessment appeals. This power could be used to assess a fee on each appeal filed which would be refundable in the event the Board's procedural requirements were met and the case proceeded without any avoidable loss of hearing time. Saskatchewan has provision for such a system. These fees would be refunded to appellants or their agents in all cases except where the matter was withdrawn or adjourned without adequate notice.

Do parties believe a refundable fee system would discourage unnecessary lost hearing time?

On what basis should such a fee be set? Should it be on a sliding scale based on property value, amount in dispute, scheduled hearing time or number of properties?

Some might argue that an application fee (even if refundable) might be an inappropriate barrier to low income taxpayers. However, a number of municipalities already impose application fees on appeals at the municipal level under the authority of s. 481. For residential properties these fees vary from $10.00 per roll number to $50.00. For non-

residential and business property fees vary from $10.00 to $200.00 with some using sliding scales and some setting maximum amounts.

Would a refundable fee system have an adverse impact on the fairness and accessibility of the appeal system, given the provisions currently in place at the municipal level?

What level of fees would be appropriate?

How should any such policy deal with appeals involving multiple roll numbers?

Adjournment Policy

The Board presently has a more liberal adjournment policy than some comparable Boards in Canada. For example, in Saskatchewan, the Board's rules provide:

> 7.01 Postponements and adjournments are not a matter of right and accordingly will not be automatically granted.
>
> 7.02 Adjournments will not be granted on the basis of non-preparedness when a minimum of 60 days notice has been given prior to hearing.

In Ontario adjournment requests are rarely allowed after the Certificate of Readiness is filed. The Board could pass and enforce a similar rule and become considerably stricter in granting adjournments.

Is the Board's current adjournment policy too generous?

Should the Board enact a rule limiting the circumstances in which adjournments would be granted?

The Board's current procedural guidelines (Section 9) provide for panels to deal with postponement requests so long as a written request is received 10 days before the scheduled hearing. The Board would consider amending this provision to make it more useful.

What are the parties experiences with procedural guideline 9 and are there any suggestions to improve its effectiveness?

The question remains of how to deal with requests for an adjournment when a party alleges that the results in another pending case will determine the decision in the case at hand. The Board recognizes that this is sometimes a significant concern, particularly where an important issue is before the courts. However, the Board is directed to issue its decision within 150 days of the appeal. Therefore, an open ended adjournment is inappropriate.

The Board believes that cases of this type could be dealt with by proceeding with the hearing and deciding the case on the basis of the law as it stands at the time. If the panel felt the issue might indeed affect the ruling, it would issue a preliminary decision, and in its ruling, give the party raising the issue permission to reapply to the Board for further consideration based on the new ruling. This would have to be done within a fixed period of time, for example 60 days, after the ruling referred to in the decision. This would put the onus on the party raising the issue to reapply in a timely way. It would deal with all cases in the first instance, at least in a preliminary way. It would also eliminate the need to delay a case where, after hearing the rest of the case, a postponement proved unnecessary (for example where the appeal could be decided in any event on other grounds).

Longer Notice of Hearing

The Board is obliged to conclude its cases within 150 days. Some express the view that cases get adjourned because of insufficient time to become familiar with the issues and evidence involved. The Board wishes to ensure that it is giving sufficient notice to allow parties to prepare and to meet any pre-hearing obligations it may impose. At the same time, it must ensure that any additional period of notice does not prevent it meeting its statutory obligation to render its decision within 150 days. As noted above, Saskatchewan's strict adjournment policy is predicated on parties receiving a minimum of 60 days notice of hearing. ***Appendix 6*** is a chart showing how some of the proposals in this paper would fit into the Act's time frames.

Are parties currently getting sufficient notice of hearing to allow them a fair and adequate opportunity to prepare for their appeal?

If not, what would be an appropriate period of notice, either from the date of appeal or from the giving of the specific notice of the hearing date?

Teleconference or Video-conference hearings

Technology is opening up new opportunities for handling issues on an appeal. It is now technically possible for board panels to hear some matters (particularly interim matters like adjournment requests, requests for direction, or the sort of administrative hearings suggested above) using teleconference or video conference facilities. This has the potential to save parties the inconvenience of travelling to the Board's facilities and waiting to be heard.

The Board believes it has the power to pass a rule allowing such proceedings. Several analogous tribunals have already done so and make use of video or teleconference hearings in appropriate circumstances.

Do parties believe teleconference or video-conference proceedings would help conduct the Board's business more efficiently? If so, in what circumstances and under what conditions should such proceedings be conducted?

Procedural Guides

The suggestions above are mostly substantive procedural changes designed to change the way the Board's business is conducted. The Board recognizes that some of the problems it is experiencing may be due to inadequate knowledge, by some parties, of the Board expectations under its current procedures. If the Board amends its procedures following this consultation, sending out new information to stakeholders will no doubt be necessary. The Board is interested in hearing from those involved in the process about how the Board can most effectively communicate its expectations and rules to those

involved in the appeal system? ***Appendix 5*** is a draft Information Bulletin capturing some of the ideas in this document. The board invites comment on both the utility and content of that draft document.

Should the Board publish more or improved procedural guides on the appeal system? If so, what topics should be covered and to whom should they be directed?

Do parties have other suggestions for improving the understanding of the public at large, and stakeholders, about Alberta's assessment appeal system?

The topics set out above are a result of the Board's preliminary consultations and its own research. It is anxious to hear from stakeholders on these and other topics that may improve the efficiency of the system and the Board's service to the public of Alberta.

6. Options using New Technology

Communication is a large part of the Board's challenge. The large volume of cases the Board processes each year, their varying complexity, the variety of persons involved and the number of Board members and panels all create a need for clear and timely communication. The Board is exploring ways it can use new technology to improve its operations.

It is considering two main options. The first is to implement ways that parties and board members can gain easy access to the board's schedule and other documents using access through the Internet, a fax-back system or an automated phone system. The second is to move forward to an electronic filing system that would allow parties to file appeals, replies and other documents electronically, again using a World Wide Web home page on the Internet.

The Board would like to hear whether parties now have, or plan to have, access to the Internet through their own computers or their office networks. The Board would also like to know how many of the persons who deal with the Board use, or have access to, E-mail facilities. Both E-mail and Internet access can be obtained through an ordinary telephone line using a computer modem costing less that $150.00. Monthly access charges run as low as $15.00 per month.

> ***Do parties presently have access to e-mail, the Internet and the World Wide Web? If not, are they planning to acquire such facilities or would they do so if the Board offered on-line form filing and information on the Board's operations?***
>
> ***To what extent would the ability to file appeals, replies and other forms by computer assist parties? Are their disadvantages to such a system and if so what are they?***

A passive system would give on-line access to the Board's schedule, forms, rules, legislation and possibly decisions. This would either be live, or updated daily.

Any advance into electronic filing would, at first, be optional. The Board recognizes that while agents and municipalities who deal with the Board regularly might quickly adapt to such a system, it might not work for individuals who deal with the Board infrequently. An on-line system would provide forms that parties could complete on screen and submit electronically. Parties could print their own copies of these forms, and would be sent forms submitted by others. Security would be maintained through a system of password access. Parties who chose to use the system could receive correspondence from the Board electronically.

7. Appeals at the Municipal Level

The primary purpose of this consultation is to seek input on the appeal process at the Municipal Government Board level. However, the cases the Board hears have all been

the subject of an earlier hearing at the municipal level. The Board believes it is important that it not lose track of the broader context in which appeals arise. In particular, the Board is interested in hearing "success stories" about what approaches at the Assessment Review Board level reduce the incidence of appeals to the Municipal Government Board.

The Board would be interested in hearing whether the incidence of appeals to the Municipal Government Board is influenced by:

- Parties presenting less than full information to the Assessment Review Board, or presenting different information to the Municipal Government Board than was presented to the Assessment Review Board.

- Parties presenting no evidence at the Assessment Review Board, just using the process of a way to getting to the Municipal Government Board.

- The quality or thoroughness of the decisions rendered by the various Assessment Review Boards.

- The degree to which appraisal and other information is shared at the Assessment Review Board level.

- The degree of independence of the members of the various Assessment Review Boards from their municipal organizations.

- Other practices or procedures in use at the Assessment Review Board level.

8. Procedures for further consultation

Written Comments

The Board invites written comments on any of the questions raised above and on any other issues parties think may assist in resolving these problems. The Board is

particularly interested in hearing about how any of these possible changes will impact on stakeholders in the municipal assessment system. The Board asks that any written submissions be forwarded to the Board's consultants

The Sims Group
805, 10011 - 109 Street
Edmonton, Alberta T5J 3S8
Phone: 423-6807
Fax: 423-6813
Attention: Andrew C.L. Sims, Q.C.

with three copies by May 12th, 1997.

Workshops

In addition, the Board invites all interested stakeholders to attend one of two one day workshops to discuss these issues to be held on May 22, 1997 in Calgary and May 29th, 1997 in Edmonton (each subject to sufficient interest). If you are interested in attending this workshop, would you please complete the attached form indicating your interest and forward it to the Board ***by May 5th, 1997.***

Those who indicate an interest in attending the workshop will be sent details of the time and place of the workshop by mail. The location will depend on the number indicating an interest in participating. After the workshop and the Board's analysis of any written submissions the Board proposes to decide upon and adopt amended procedures. These new procedures will address the issues set out above, taking into account the advice received through this consultation process. Insights stakeholders in the municipal assessment community offer will improve the quality of these changes. The Board seeks your input.

Appendix 1 – Summary of the Board's December 10, 1996 workshop

The Municipal Government Board held a scheduling workshop on December 10, 1996, attended by representatives from the agents, municipalities and assessment communities. The focus of the workshop was to address the scheduling concerns of these groups. The staff of the Municipal Government Board entered into the workshop with a desire to assist in any reasonable manner and asked the participants to provide either confirmation of all or part of the process or provide innovative alternatives.

The participants identified thirty five concerns but after breaking into discussion groups, it was determined that not all were directly related to scheduling and should be addressed in the broader context of overall procedures. The groups did address the four main topics affecting scheduling and came forward with the following suggestions:

VOLUME

- Withdrawals - have a two stage process whereby letters are sent out 60 days in advance to notify parties the Board is ready to schedule. The first 30 days will involve an information exchange or result in a withdrawal after parties have met. After 30 days the Board will proceed with hearing if parties are ready to proceed. If a withdrawal occurs after this date then the Board can award costs.

- Postponement - A first postponement in the first 30 days should be granted quite easily. In the second 30 days a postponement should be granted for only extremely extraordinary circumstances. Only one postponement per party per property should be granted. The parties need to agree on a future hearing date. Perhaps a Certificate of Readiness should be in place for the second hearing.

- Redesigning the form will help with scheduling.

- The Board might consider time limits on a hearing based on value of appeal. The parties should be notified of the time limit of the hearing. In the Notice of Hearing, advise the appellant of the time allocated for hearing.

- The MGB should work with agents & municipalities to group like properties (similar arguments) together (location, type, appellant). The Board should hear historic complaints with same base year together.

- Municipalities should inform the MGB on completion of ARB and deadlines for appeals. The municipality should also supply the MGB with the number of complaints along with categorizing the types of complaints in order for the MGB to do some long range planning of panels and resources.

  Dedicate one Board to deal with old appeals.

INFORMATION

- Bring parties together for a prehearing, exchange of information or have a certificate of readiness in place before scheduling a merit hearing.

- Redesign the application form to include more specific information.

- Assign a case load officer who would enforce an information exchange and arrange pre-hearing conferences.

TIME

- The 30 day and 150 day limits should be looked into; both are too short. The whole appeal (local and provincial) process should be re-examined.

- Perhaps the Board could have a longer lead time when scheduling hearings and limit the time of the hearings.

- The Board should allow a written presentation after one or two postponements.

- The delegates felt that the Board should not schedule to postpone.

- More time should be allowed for presentations at the ARB level.

COMMUNICATION

- The evidence for an appeal should be specific (land & improvements).

- The Board should have clearer decisions giving directions to future appeals of a similar nature.

- Redesign form to show residential, vacant land, commercial and cross reference appeals.

- The appellant should communicate with the scheduling clerk for dates (perhaps this could be shown on the form).

- More timely written decisions to eliminate postponements.

- The Board should have access to Municipal information (assessment notice)

- Have a exchange of information before the hearing.

Following the presentations of each of the working groups, general discussion further limited consideration to three specific changes that may address the principle issue of scheduling. The working groups retired to discuss the specifics and came forward with the following suggestions:

Backlog - 2 stage process

- Why is there a backlog? The reasons are postponements and last minute withdrawals. Edmonton not hearing COR (ARB) until AAAB/MGB previous years are done. Some postponements are due to outstanding court cases and Board decisions.

- The Board should set time for hearings 60 days in advance - postponements and withdrawals must be made in the first 30 days.

- Have mandatory communication to resolve issues i.e. withdrawals, exchange of all information, if legal issues get lawyers involved much earlier than a hearing.

- Allow withdrawals or postponements 30 days prior to hearing. After 30 days introduce a cost for a postponement or withdrawal (penalty as least $250.00 - at the discretion of Board members)

- Should not schedule to postpone.

Form

- Section of form to have appellant information - phone number
- Four categories (tick boxes) - statistics
    - Classification - farmland, industrial, residential (single or multi) commercial (office, shopping centre, warehouse, other), rail, miscellaneous, other.
    - Appeal against land, improvement, both (tick boxes)
    - Estimate time for hearing 1 hour, 1/2 day, 1 day, more than 1 day - tick boxes
    - Cross reference to other property under appeal. If yes, list or attach properties.

Three Party Communication

- MGB to receive the results from the ARB (planning tool)
- Regionalize scheduling (Edmonton/Calgary/Other)
- Assign a case officer to work with appeals. Allow 30 days for Respondent/Appellant to undertake communication related to a possible negotiation, scheduling, exchange of information, etc. to a proposal. If an agreement is achieved have a Board review to resolve issue. Use a Pull or Push process. The case officer would not be involved in the hearing, just the set up.
- Use Common Sense.

Schedule by Agent

- Major cities many assessors change from time to time, not able for MGB to track assessors.
- Dovetail a two stage process; the Board could set a date for the 2 stage process.

- Agent & municipality to get together and solve the problem of scheduling. Board should set a date if no agreement.

- Group appeals by appellant & owner and have specific scheduling requests handled in the first 30 days.

Residential

This class of appeal is generally assumed to relate to a single family detached dwelling. The appeal is filed by the home owner, who represents himself at the hearing. The hearing lasts approximately one and one half hours with submissions limited to oral testimony and pictures of the dwelling and surrounding areas.

Multi Family Residential

Condominium - Single Ownership

The first subclass relate to multi family condominium complexes which can include row housing, walk-ups and high-rises. Separate title has been issued for each unit, but all are owned by a single owner who rents and manages the property as a single titled residential rental property. The appeal is filed by an agent who represents the owner at the hearing. Hearings last approximately four plus hours with a large body of evidence related to market value of the complete property.

Condominium - Multi-Ownership

In a very limited number of cases, no more than one or two a year, a condominium complex comprised of multi owners is appealed. In these cases, one individual or agent represents all the owners, with hearings following the same time lines and evidence as single owner condominiums.

Residential - Rental

The second subclass is single title residential rental property. This property is comprised of the same type of structures as condominiums and the manner of filing, evidence and length of hearings is just about the same.

Office

This class of appeal is can be generally described as office buildings comprising both high-rise and low-rise. In Calgary this type of appeal has three subclasses;

- downtown,
- beltline
- suburban.

Appeals are filed by agents who represent the owners at the hearing. Depending on the complexity of the appeal, the agent can be assisted by a lawyer and an appraiser. Hearings can range from a half day to two or more days. Evidence includes appraisals, income statements and comparable properties.

Commercial

This class of appeal includes a wide range of property generally typified as comprising space generally assumed to be rented for commercial purposes. They can include

- shopping malls
- strip malls
- shopping segments of office buildings
- stand alone commercial enterprises such as:
- auto dealerships
- warehouses
- restaurants
- hotels/motels
- big box shopping outlets such as Superstore.

Appeals are filed by agents who represent the owner at the hearing. Depending on the complexity of the issue, the agent can be assisted by a lawyer and appraiser. Evidence includes appraisals, income statements and comparable properties. Hearings can range from a half day to two or more days.

Industrial

This class of appeal includes all types of industrial property such as:

- gas plants
- petrochemical plants
- manufacturing enterprises.

Appeals are filed by agents or the owners tax department, but they are represented at the appeal by either a lawyer or agent. Evidence includes appraisals, production levels and

comparable properties. Hearings generally last no less than one day and in many cases a whole week may be required.

Business

This class of appeal is related strictly to business assessments. Appeals can be filed by either the owner or agent but the norm is by an agent. Hearings last approximately two hours and the evidence is related to the rent of the premises and comparable businesses.

Farm

The vast majority of this type of appeal relate specifically to the "three acre site". The first three acres of farm property is assessed at market value and the balance assessed at regulated agricultural rates. The difference between the two are significant which results in the owners appealing the assessed market value of the three acre site. Appeals are filed by the individual owners who represent themselves at the hearing. Approximately one and one half hours is scheduled for each appeal.

MUNICIPAL GOVERNMENT BOARD

PROCEDURAL GUIDELINES

Municipal Government Board
Consultation Document
March, 1997

MUNICIPAL GOVERNMENT BOARD
PROCEDURAL GUIDELINES

Definition

The following Procedural Guidelines adopted by the Municipal Government Board (hereinafter referred to as the "Board") are distributed to the public and are the formal procedures of the Board. The procedures are in two basic parts: one for the general operations of the Board and one for the complicated issues that would require a more formalized process. This formalized process would include pre-hearing conferences to resolve the administrative issues to help the hearing run smoothly and would be instituted under the direction of the Administrator and may require the members participation.

Part 1-Application

1. These Procedural Guidelines apply to the Municipal Government Board (the Board). They are made according to the authority set out in Section 523 of the Municipal Government Act.

2. The Procedural Guidelines describe in general terms the Board's practices and procedures. The Board may vary the procedures in order to meet particular and individual concerns.

3. These Procedural Guidelines are in addition to the requirements of the various statutes and regulations that apply to the Board. In the event of a conflict between these Procedural Guidelines and any statute or regulations, the statutes and regulations shall take precedence.

4. Application

   (a) The Procedural Guidelines in parts 1 and 3 will (subject to any directions by the Board) apply to all proceedings before the Board.
   (b) The Procedural Guidelines in part 2 will:
      (i) Apply at the direction of the Board at their own initiative.
      (ii) Apply on request on one of the parties and where the Board directs.

5. Filing

   An appeal to an Assessment Review Board decision or an assessment appeal of linear property shall be filed in the form prescribed in appendix A which is attached. All other appeals or applications shall be in accordance with the statutes authorizing the appeal or application.

6. Notice

Notice shall be given to parties as required by the applicable statutes and regulations and as the Board otherwise determines, and shall be in the form as required by the Board.

7. Time and Place of Hearings

Hearings will be held at a time and place that the Board deems appropriate.

8. Pre-Hearing Meetings

The Board may direct that the parties hold meetings before the actual hearing date. The purpose of these meetings is:

(a) To clarify and set procedures to be followed at the hearing.
(b) To deal with other matters that are not substantive in nature.
(c) To deal with points preliminary to a hearing such as the question of status of parties, the jurisdiction of the Board, and the disclosure of documents.

9. Postponements

Requests for postponements, with reasons, of a scheduled hearing can be granted only by a panel of the Board. Written requests for postponements received 10 days before the scheduled hearing may be considered by a panel of the Board before the scheduled hearing.

10. Consent Matters

Subject to the Board having jurisdiction and authority to do so, the parties involved may resolve matters by consent. The Board may accept and endorse the mutual consent. Parties shall advise the Board as soon as possible that they want to resolve certain matters by consent.

11. Taping or Recording

Any party to a hearing may apply to the Board for permission to record the proceedings or the Board, on its own initiative, may direct that the proceedings be recorded. The Board may grant permission to record the proceedings in what it determines to be an acceptable manner including the production of satisfactory equipment. Where a party receives permission to record proceedings condition of the permission will be that copy of the tapes or transcripts be made available to other parties on request. The party responsible for recording shall supply a copy of the tape or recording to the Board at no cost if requested. Where a written transcript has been prepared, the party shall supply a copy to the Board at no cost, if requested.

Part 2- Rules

12. Procedure for Complex Issues

The Procedural Guidelines in Part 2 apply only where

(a) The Board, on its own initiative, direct that they apply.
(b) A party requests that they apply and the Board order that they apply.

The Procedural Guidelines in Part 2 are in addition to the other rules and procedures adopted by the Board and do not detract from them.

13. Briefs

All parties appearing before the Board shall file with the Board and serve on the other parties a brief and any other documents that the Board directs. The brief shall set out the grounds and reasons in sufficient detail and should not simply be a restatement of the issues set out in the legislation that pertains to the matter.

The brief shall also set out:

(a) A summary of the relevant facts.
(b) The grounds and reasons.
(c) A summary of the argument.
(d) A reference to any matters pending before the Board or the courts which are related to the matter.
(e) An estimate of the time required.
(f) The expert witnesses, if any, to be called.

Four (4) copies of the brief will be filed with the Board at the beginning of the hearing and served on the other parties at least 30 days before the hearing.

Subject to the Board's discretion, evidence in addition to that contained in the brief in either written or oral form shall not be introduced at the hearing.

14. Time for Filing

The time for filing a brief will apply unless altered by the Board or on agreement by the parties appearing before the Board.

Part 3 - Proceedings at Hearings

15. The Board is subject to the requirements of the Municipal Government Act and other procedural rules developed at common law. The Board, when conducting its hearings, will comply with these requirements and will, at the outset of the hearing, indicate to the parties the order of proceedings that are to apply at the hearing.

16. At the hearing, the Board shall:

(a) Record the names, addresses and interests of all persons, including the name and address of any agent.
(b) Provide all parties with a copy of the documents which are before the Board.
(c) Introduce the appeal and record and introduce the parties in attendance and the status of each party.
(d) Introduce the Board members who are present to hear the appeal.
(e) Inquire of the appellant and other parties if there are any objections to those Board members who are present and deciding the appeal (either on the grounds of bias or conflict of interest).

Note: At common law, a party has the right to object to a member of a panel hearing and deciding an appeal, based on a reasonable apprehension of bias or conflict of interest.

(f) Keep a record of the hearing.
(g) Accept and record exhibits.
(h) Clear the hearing room between hearings.

17. Jurisdictional Questions

During a hearing, if an objection is raised concerning the Board's jurisdiction to hear the appeal, the Board shall accept any oral or written arguments and either recess the hearing and decide the issue or accept the arguments and reserve judgment on the question of jurisdiction and proceed to hear the merits of the appeal or application.

18. Conflict of Interest/Bias

(a) A member who has either a personal interest in any Board's hearing or who, because of his position, affiliation or involvement in or with an organization, firm, business or Alberta Government Department or agency which has an interest or concern in any matter related to any such hearing, must declare such interest and refrain from participating.
(b) Where the appellant and/or his agent or any party served by notice of an appeal objects to the participation of a Board member present at the hearing, on the grounds that the member has an actual or reasonable apprehension of bias or a conflict of interest, that member shall:

(i) Vacate his seat if he or she believes that the objection raises some reasonable grounds of actual or reasonable apprehension of bias or conflict of interest. or

(ii) Vacate his seat, if he or she believes that the objection is not substantiated, to permit the remaining panel member(s) to hear any further challenges to his or her hearing the appeal. The presiding officer shall then call a recess so that the remaining panel member(s) may decide if there is proof of a reasonable apprehension of bias or of a conflict of interest on the part of the challenged member.

The presiding officer shall make the final determination on a challenge against a Board member.

(c) If it is determined that a Board member should vacate his seat, then that member shall not participate in the hearing or in the Board's decision.

(d) If removing a Board member from a panel results in less than the required quorum of the Board remaining, then:

(i) An alternate member shall be brought in and the appeal hearing continued on the same day. **or**

(ii) The hearing be adjourned and the matter be rescheduled for hearing with an alternate panel of the Board.

"Presiding Officer" means the person designated by a panel of the Board to preside over a hearing of a specific matter before the Board.

19. After the introductions by the secretariat, the presiding officer shall outline the procedures for the conduct of the hearing and shall provide general information, as follows:

Note: *The following is intended as a guideline only, recognizing that there may be mitigating circumstances which require alternative procedures, to be established at the time of hearing, by the presiding officer:*

(a) That the Board will make its decision based upon the evidence and information received for and at the hearing.

(b) That all proceedings are to be directed through the chair.

(c) Outline the sequence of presentations by all parties.

(d) Explain that the opportunity to submit oral and written arguments/evidence to the Board is available to all parties.

(e) That all parties will be given an opportunity to be heard and for cross examination.

20. Decisions

Prior to the close of the hearing, the presiding officer shall explain the manner in which the Board's decision is to be issued:

(a) Verbally, with written confirmation to follow. or
(b) On request, by an order of the Board, setting out the findings of fact, decision and reasons for the decision.

Note: A decision is not final until it is given in writing when there is a requirement to provide reasons.

21. Written Confirmation of Decision

Written confirmation of the Board's oral decisions pertaining to appeals of the assessment review board decisions must be in letter form and issued within 30 days of the close of the hearing.

22. Board Orders

Orders of the Board are to be signed by the person designated presiding officer by the panel hearing the appeal/application, or the presiding officer may designate, in writing, another member to sign in his or her place.

All orders of the Board are to be issued within 60 days of the close of the hearing unless the panel of the Board hearing the appeal/application deems that a longer fixed period of time is proper.

MUNICIPAL GOVERNMENT BOARD

Procedural Guideline Amendment No. 1/97
March 5, 1997

Guidelines for Procedures at a Standard Assessment Appeal Hearing

A. PRELIMINARY PART OF A HEARING

1. The panel calls the interested parties into the hearing room.

2. The Presiding Officer calls the hearing to Order.

3. The panel asks all parties who wish to make submissions to the Board to identify themselves and establish their credentials (i.e. City assessor, landowner, agent, observer, or other category). Note: Parties may be asked to provide written confirmation of their status.

4. The Presiding Officer introduces the panel and asks all parties if there is any reason why any of the panel members should not hear and decide on the appeal. (If there are objections, see formal procedural guideline).

5. Confirmation of the Property under appeal (as per the agenda). Presiding Officer reads the roll no., legal description or municipal address, and the other information on the agenda (ie: improvements, land and associated assessed value.

6. The Presiding Officer outlines to all parties the procedure intended to be followed for the hearing and asks if there are any other preliminary matters to be taken care of (eg:scheduling, order of presentations, housekeeping matters).
(* See Attachment A, simplified version of standard procedure)

*Jurisdictional arguments may be scheduled in this portion of the hearing.

IMPORTANT NOTE: - If there is a change from the normal procedure outlined in this guide, then the Presiding Officer may wish to take a break and establish revised procedures indicating the rationalization for the change.

7. Oath Sworn. For Christians -
the right hand is placed on the Bible and the Board member or staff doing the swearing in asks " Do you solemnly swear that the evidence you are about to give to the Municipal Government Board is the truth, the whole truth and nothing but the truth, so help you God"

For Others - The right hand is raised and the Board member or staff doing the swearing in asks "Do you affirm that the evidence you are about to give to the Municipal Government Board is the truth, the whole truth and nothing but the truth".

8. The Presiding Officer asks if either party will be making a request for a written decision - Board Order or written reasons. If not, the Presiding Officer advises that an oral decision will be given following the hearing and the decision will be confirmed in writing within 30 days. If a Board Order is being requested, then the Presiding Officer advises that each presenting party may be required to submit a written summation to the Board following the hearing. The Presiding Officer advises as to what the Board expects to be included in the written summation and how that summation will be administratively handled.

(Written Summaries)
The purpose of submitting summations is for the Board and the staff to have a written record of all the pertinent points made during the hearing by all presenting parties. The summaries provide great benefit to the author of a Board Order. It is important to note that no new evidence be included in the summary document and that references to any pertinent legal arguments and case law may be included provided that the legal arguments were part of the presentation at the hearing. (Summary documents are not exclusively legal arguments).

The summary document shall be forwarded to the Board's office within 14 days (unless another time is agreed to by all parties). The Board's staff will then forward a copy of the appropriate documents to the opposite party at the hearing. The Board should advise all parties that if documents are not received within 14 days or include information which was not presented at the hearing, then the Board may consider accepting rebuttals within 7 days or invoking the appropriate consequence to the offending party or reconvening the hearing. Legal argument and case law submitted late is not accepted.

9. During the preliminary part of the hearing, certain issues or concerns may be raised which require some clarification. Because Board members have no prior information, it maybe helpful for the Board to have an overview of the situation/property to become familiar with the location of the site or the specific issues in a general manner. It is usually easier for the municipality to provide an unbiased overview of the subject giving the Board the facts such as: " *the property which is the subject of this appeal is located in the southwest corner of the City and there are no other buildings in the sector which are similar. This particular building suffers from a post-tensioning syndrome which the Board will be hearing about later as part of the City and Appellants presentation. Post tensioning is an issue relating to etc.....".* No argument will be presented here. The respondent(municipality) is not required to defend the assessment at this point in the hearing. {Note: When an "overview" is given, the Presiding Officer may have to interrupt if the overview is starting to become argument and the submission of evidence.}

B. MERIT PART OF A HEARING

1. Appellant's Submission

2. Questions allowed from the municipality and other parties.

3. Questions allowed from the Board and any questions from the respondent arising from the questions from the Board.

(Note: this portion of a hearing can be confusing to some participants. It is only a question period for clarification of the information submitted by the presenters. The other parties will have an opportunity to make their submissions later.)

(Note: if exhibits are submitted during the course of the hearing, the Presiding officer or secretary numbers and identifies each exhibit as it is presented. The number of the exhibit is spoken aloud so that references can be made to that number throughout the balance of the hearing. Use A to identify appellant's exhibit and R to identify respondent's exhibits but number sequentially, eg. A-1, A-2, R-3 etc.)

4. Respondent's (municipality) Submission

5. Questions allowed from the appellant and other parties.

6. Questions allowed from the Board and any questions from the appellant arising.

7. Others wishing to make submissions do so now. (*usually there is only the appellant and respondent at an assessment hearing, but occassionally other interested parties may attend and wish to make submissions to the Board.)*

8. Questions allowed from the appellant, respondent, and the Board (same format).

C. LEGAL ARGUMENT

If legal argument are being made, then it should occur in this section of the hearing process. This section may include the submission of supporting case law and will allow for rebuttals.

D. SUMMARY AND CLOSING PART OF A HEARING

Order of making summary statements. It is usual in the quasi-judicial process that the appellant be given the last word at a hearing. This provides the appellant every opportunity to have a fair hearing in front of the Board. After all, it is the appellant who is appealing and making every effort to convince the Board that the decision of the ARB should be changed.

1. If required, legal argument and supporting case law by each party and rebuttals, if necessary, may occur at this portion of the hearing.

2. Respondent's Summary Statement

3. Other presenters Summary Statement

4. Appellant's Summary Statement

4. Presiding Officer formally closes the hearing.

5. *If an oral decision is being given, the Presiding Officer asks all parties to leave the room and the Board deliberates, reaches a decision and notes the reasons for the decision. The parties are called back into the room and given the decision with reasons.*

6. *If a Board Order has been requested, the Presiding Officer advises that the decision will be forwarded in the form of an Order which each party could expect within 6 to 8 weeks.*

8. *The Presiding Officer or Secretariat asks all parties to clear the room. The Board then keeps itself separate from those who have or will be appearing before the Board on this hearing day. It is important that panel members or participants not be seen engaging in discussion (in or out of the hearing room) with appellants or respondents before a hearing or after a hearing has been closed.*

ATTACHMENT "A"

STANDARD HEARING PROCEDURE FOR ASSESSMENT APPEALS

Simplified Guideline for Advising All Parties at a Hearing as to What the Procedure will be.

The Presiding Officer advises the following.

Unless there are alternative suggestions, it is the Board's intent to proceed as follows:

1. Following the swearing in, the Board will first hear the evidence and argument of the appellant. *(unless an overview by the respondent is required)*

2. The Board will call for questions from the respondent.

3. The Board may ask questions of the appellant.

4. The Board will provide opportunity for the respondent to ask further questions arising from the questions of the Board.

5. The Board will hear the evidence and argument of the respondent.

6. The Board will call for questions from the appellant.

7. The Board may ask questions of the respondent.

8. The Board will provide opportunity for the appellant to ask further questions arising from the questions of the Board.

9. Legal argument and supporting case law by the appellant.

10 Legal argument and supporting case law by the respondent.

11. Rebuttals by each party, if necessary.

11. The respondent provides a summary. (no new evidence or legal argument).

12. The appellant provides a summary. (no new evidence or legal argument).

ATTACHMENT "B"

CONDUCTING A STANDARD ASSESSMENT HEARING
(Simplified Version)

1. Introductions

2. Presiding Officer asks if anyone has a reason why any panel member should not hear and decide on the appeal.

3. Presiding Officer confirms which property is under appeal (agenda).

4. Presiding Officer outlines procedure for the hearing.

5. Board member or Secretary administers oath.

6. Presiding Officer determines the form of decision (ie: oral, written reasons, Order).

7. Presiding Officer asks for submissions as per the usual procedure. (See attachment A)

8. (a) Presiding Officer closes hearing and if oral decision, asks parties to leave room so Board can deliberate. Board calls parties back into room and gives decision with reasons and advises written confirmation will follow within 30 days, *OR*
(b) If the decision is in the form of a written Board Order, no decision is given and the Presiding Officer advises that the Order will be forwarded within 6 - 8 weeks.

9. Presiding Officer asks that Board Room be cleared immediately.

Alberta
MUNICIPAL AFFAIRS

Application For Assessment Appeal

ONE APPLICATION FORM REQUIRED FOR EACH TAX ROLL NUMBER UNDER APPEAL

APPELLANT INFORMATION

Name *(Last)*	*(First)*	*(Second)*	Telephone Number
Address *(Street, PO Box, RR)* *(Suite, Apartment)*	*(Town/City/Village)*	*(Province)*	*(Postal Code)*

PROPERTY OWNER INFORMATION *(If different from Appellant)*

Name *(Last)*	*(First)*	*(Second)*	Telephone Number
Address *(Street, PO Box, RR)* *(Suite, Apartment)*	*(Town/City/Village)*	*(Province)*	*(Postal Code)*

NAME AND ADDRESS TO WHICH ANY NOTICE OR DECISION IS TO BE MAILED

Name *(Last)*	*(First)*	*(Second)*	Telephone Number
Address *(Street, PO Box, RR)* *(Suite, Apartment)*	*(Town/City/Village)*	*(Province)*	*(Postal Code)*

PROPERTY UNDER APPEAL

Name of Municipality

Legal Description *Lot* *Block* *Plan* *Section* *Township* *Range* *Meridian*

OR

Municipal Address of Property

Property Tax Roll Number

DECISION OF ASSESSMENT REVIEW BOARD

Date of Decision (year / month / day) _____

Copy of Assessment Review Board Decision attached? ☐ Yes ☐ No

Copy of the most recent Assessment Notice attached? ☐ Yes ☐ No

DEPOSIT FEE *(The deposit fee is refundable providing all processing timelines specified by the Board are met)*

Is the required deposit fee attached? ☐ Yes ☐ No

CONSULTATION WITH ASSESSOR

Was a meeting held with a municipal assessor? ☐ Yes ☐ No If Yes, date of meeting was: _____
Year / Month/ Day

List all outstanding unresolved issues below:

DRAFT

TYPE OF APPEAL

☐ Land ☐ Improvements ☐ Both

CLASSIFICATION OF APPEAL

☐ Farmland

☐ Industrial

☐ gas plant ☐ petrochemical plant ☐ other industrial plant *(please specify)*: _____

☐ Residential

☐ single family ☐ multi family (high rise apartment) ☐ multi family (walk up apartment)

☐ condominium (multi ownership) ☐ condominium (single ownership)

☐ Office

☐ downtown ☐ suburban ☐ other *(please specify)*: _____

☐ Commercial

☐ general commercial ☐ shopping mall ☐ strip mall ☐ big box shopping complex

☐ warehouse ☐ restaurant ☐ hotel/motel ☐ other *(please specify)*: _____

☐ Rail

☐ Linear Property *(please specify)*: _____

☐ Equalized Assessment

☐ Other *(please specify)*: _____

REASONS FOR APPEAL

Which of the following does the appeal relate to:

Legal Argument ☐ Yes ☐ No Legislative Interpretation ☐ Yes ☐ No Assessed Value (quantum) ☐ Yes ☐ No

If the appeal relates to Legal and/or Legislative Argument, please specify below: *(attach an extra page if required).*

DRAFT

REASONS FOR APPEAL *(continued)*

If the appeal relates to Assessed Value (quantum), please specify below: *(attach an extra page if required).*

IMPORTANT NOTICE

Within 30 days of filing this appeal;

- ***notify the Board that all the reasons and arguments of the appeal have been disclosed to the respondent, and***
- ***file with the Board the documentation of this disclosure.***

List below similar properties that are under appeal which should be heard by the Board at the same time:

DRAFT

Provide a preliminary list of comparable properties:

REQUIRED INFORMATION

Will there be representation by legal counsel? ☐ Yes ☐ No

How many witnesses will be called upon? _____

Type of witness(es): *(Check (✓) applicable box(es)*

- ☐ Engineer(s)
- ☐ Appraiser(s)
- ☐ Property Manager(s)
- ☐ Other *(please specify)*:

_____

_____

_____

DRAFT

Time required for the hearing: *(Check (✓) one of the following)*

- ☐ Less than two hours
- ☐ Two to four hours
- ☐ Four to seven hours
- ☐ More than one day - please specify: _____ days.

Preferred Date of Appeal: _____
Year / Month/ Day

By what date will all the reasons and arguments of the appeal be disclosed to the respondent: _____
Year / Month/ Day

NOTE: The appeal must be heard within 150 days of filing the appeal.

A Certificate of Readiness must be filed with the Board when proceeding to a merit hearing.

_____ _____
Signature of Appellant Date
OR
Person Authorized to Act on Behalf of Appellant

Municipal Government Board Information Bulletin

Scheduling, Rehearings and Postponements

Purpose

This bulletin describes the procedures and guidelines the Board uses in scheduling appeals for hearing and in dealing with requests to postpone or rehear matters.

Procedures are designed to ensure that all appeals are heard fairly and expeditiously in accordance with the Act and with due regard to natural justice. Cases will be scheduled so that parties get adequate time to prepare (60 - 90 days) but avoidable postponements will be discouraged. The Board will continue to evaluate its procedures and welcomes suggestions for improvement.

Scheduling

In all cases the Board attempts to schedule the matters before it so as to:

- Provide the parties with adequate notice of the time and place of the hearing and the matters to be dealt with
- Achieve procedural fairness and to comply with the rules of natural justice
- Provide, wherever possible, a period of 60 - 90 days notice of the proceedings so that parties have adequate time to prepare for the case, exchange information, arrange witnesses and representation and to comply with the Board's procedural requirements.
- Discourage unnecessary postponements and to deal with necessary postponements fairly and efficiently.
- comply with the statutory requirements including the requirement for a decision within 150 days of the receipt of the statement initiating the appeal.

Non-complex appeals

For non-complex appeals the Board uses an expedited process. These cases involve owner occupied residential or farm property where the owner is the appellant appearing on his or her own behalf. Appellants may file a short form of appeal, and cases are scheduled immediately upon receipt without any need for further forms. The hearing date will customarily give the parties between 60 and 90 days notice of the hearing. Parties may choose to go on the standby list, and if a slot becomes vacant, their appeal will be brought forward.

Regular Appeals

For all other appeals the scheduling process will proceed as follows:

The Board will forward the statement of the appeal to the respondent immediately it is received. Within the next 30 days, the parties will be obliged to contact each other and establish, between themselves:

- That the issues on appeal are clearly identified and understood by both parties
- The length of time they anticipate the hearing will take including evidence and argument
- Whether there are any preliminary matters to be dealt with on the appeal
- That all documents relevant to the appeal have been exchanged
- Any dates upon which the parties, their representatives or their witnesses cannot be available
- Whether they wish to have the appeal placed on the standby list to be heard at an earlier date should one become available

By a date specified by the Board, approximately 30 days after the statement of appeal is sent out, the parties must each send the Board a Certificate of Readiness, in the form attached, specifying that these obligations have been met.

As soon as this certificate is received, the Board will schedule the matter for hearing, avoiding where possible dates shown as unavailable. This date will give the parties between 60 and 90 days notice of the hearing date unless they indicate their availability for an earlier date that is open. If parties then discover they need a postponement, they will be required to follow the procedures set out below.

If the Board does not receive the Certificate of Readiness by the specified date, it will immediately set the case down before an administrative panel. The parties will be expected to appear at that panel to explain why the Board's requirements have not been met. The panel will not deal with the substance of the appeal, but it may give directions for resolving any matters in dispute, schedule the matter for hearing and, if appropriate, give an order for costs where it finds a party has failed to comply with its obligations.

Standby list

The Board will fill slots in its hearing schedule that become vacant due to cancellations with other cases from its standby list. This list will consist of appeals where both appellant and respondent have indicated a willingness to be called for hearing on relatively short notice so

that their appeal can be heard as soon as possible. The parties will each be asked to waive the normal period of notice for the hearing (under section 494(b)) if they are called for an early hearing. Those on the standby list will in any event, be given a regular hearing date which will go ahead as scheduled unless their appeal can be heard earlier through the standby system.

Postponements

Sometimes parties before the Board will need to ask that scheduled matters be adjourned. In deciding individual requests the panel will decide based on the facts of the individual case and the need for procedural fairness. In doing so panels may consider the following matters.

All matters will proceed before the Board as scheduled unless a postponement is granted in accordance with these provisions, or by the hearing panel.

All requests for postponements must be raised with the Board, with notice to every other party, as soon as possible after the party requesting the postponement learns of the circumstances impeding the established hearing date.

Whenever practicable, requests for a postponement will be dealt with by an administrative panel of the Board prior to the scheduled hearing.

The Board may deny a request for an adjournment if the party could have made the request at an earlier date and failed to do so unless it would be unjust in all the circumstances to refuse the postponement.

When parties agree on a new date for a hearing that is suitable to the Board, the Board may adjourn the matter by consent to that date without a hearing.

When a postponement is agreed to by all parties, but they cannot agree on a date, all parties will advise the Board forthwith of the dates on which they are unavailable and the Board will set a further date, without a hearing.

When a party seeks an adjournment because the case may depend upon or be influenced by the results of another matter that is currently before the courts or the Board, then, unless the Board believes it would be unjust or impractical to do so, the Board will normally refuse a postponement and proceed to hear the matter subject to the procedures in the next paragraph.

In making its decision, the Board will consider whether the pending case might have some impact on the decision it would otherwise render. If the Board believes the pending case may have some impact, then the Board may render an interim decision. Such interim decisions will usually provide that the party wishing to raise the other matter of significance may apply to the Board for a further consideration of the matter in the interim decision. Any such application must be brought no later than 60 days after the pending decision is finally rendered. In the event no application is brought within the 60 days, the interim decision shall be deemed to be the Board's final decision.

Where more than one case is the subject of an application for further consideration due to another decision having been rendered, the Board may

- direct that the matters be dealt with by the original panel, or
- direct that several such matters be heard together, but only where it is satisfied that the arguments in respect of those several matters will be similar and where a panel of the Board can adequately deal with the matters without having been present during the original hearing.

In considering any request for costs in relation to a postponement, the Board will take into account whether the parties have complied with the Board's scheduling and postponement procedures as well as the circumstances that may justify the postponement.

In granting postponement requests based on unavailability, the Board may, if appropriate, schedule the matter for an earlier available date. The Board reserves its right to postpone matters on its own motion when necessary.

Requests for Rehearings

Section 504 of the Municipal Government Act provides that:

> **504** *The Board may rehear any matter before making its decision, and may review, rescind or vary any decision made by it.*

This section sets out the Board's guidelines in exercising its discretion to rehear matters as permitted by Sec. 504.

The Board will not as a matter of course rehear matters since it is imperative that the Board's decisions bring matters to conclusion and reach finality. However, the Board in exercising is discretion will review the merits of the request for rehearing in the context of these guidelines.

Form of Application

Applications for rehearing are submitted in normal letter format titled "Rehearing Request Roll No. _____". The request letter must contain the following:

- Detailed and specific reasons for the request.
- Clear statements of the grounds in support of the request.
- An outline of the new evidence to be introduced and the reasons why it was not available at the earlier hearing.
- References to earlier Board decisions conflicting with the Board's decision and specific references to same case scenarios.
- Copies of court decisions or statutes conflicting with the Board's decision.
- Names, addresses, phone numbers and contact persons of all parties at the earlier hearing.
- Documentation that a copy of the request has been sent to the respondent.
- Copy of the respondents position on the request for rehearing, if any.

Timing of Application

Applications must be timely. The Board discourages the use of rehearings as a substitute for untimely court challenges. As a guide, requests made beyond 3 months of the Board's decision will require sufficient and substantive reasons to disturb the finality of the Board's decision.

Unexplained or unreasonable delays by the parties may result in the Board refusing a rehearing. It is up to applicants to establish that they have acted with reasonable speed.

The Board weighs the reasons for any delay against the need for Board decisions to be final. It may refuse the application where it determines that the finality of the process is more important.

Reasons for Rehearing

New Facts: New facts or evidence are available which were not reasonably available at the time of the hearing. The facts or evidence must be relevant, on point and significant enough to have bearing on the outcome of the decision.

Errors: Correction of substantial errors of fact is necessary.

Conflicting Decisions: The Board's interpretation of the relevant legislation conflicts with earlier decisions of the Board not presented to or considered by the Board in the recent decision.

Court Directed Rehearing: A judicial review has taken place and the court has instructed the Board to rehear a specific case.

A party's failure to cite related case authority during a hearing is not an adequate ground for a rehearing. Similarly, failure to present available evidence is not, of itself, a sufficient ground.

Processing of Rehearing Request

The secretariat will review the completeness of the request for rehearing and will obtain the position of the respondent. An administrative panel of the board consisting of members other than those who heard the appeal will review the request for a rehearing.

If the administrative panel believes it necessary, it may allow the parties to make verbal representations on the request for a rehearing.

The rehearing administrative panel will decide whether to grant or refuse the request for a rehearing. In the event it decides to grant a rehearing, it will also decide whether to remit the matter to the original, to remit the matter to a new panel, or to proceed to hear the matter itself.

Certificate of Readiness

I certify to the Municipal Government Board, in relation to Appeal Number _____, involving:

[Insert name of Appellant]

-and-

[Insert name of Respondent]

- That the parties have discussed the issues on appeal, that the issues are identified and understood by both parties.

- The length of time we anticipate the hearing will take, including evidence and argument, will be:

  ☐ One hour ☐ One full day
  ☐ One half day ☐ Other:_____

- The parties have discussed whether there are any preliminary matters to be dealt with on this appeal.

  ☐ There are none that we are aware of at this time.

  There are the following preliminary matters: [specify]

- That all documents relevant to the appeal have been exchanged

- The parties, their representatives and their witnesses cannot be available on the following dates [specify, including the person who is unavailable and the reason for their unavailability]

- We wish to have the appeal placed on the standby list to be heard at an earlier date should one come available. We agree to waive the requirements of Section 494(b) if necessary.

  ☐ Yes ☐ No

Dated and signed

Appendix 6 – Time Line using simple and complex hearings proposal

Certificate of Readiness

National Library of Canada
Bibliothèque nationale du Canada
3 3286 51827770 8